

STATE OF WISCONSIN  
DEPARTMENT OF INDUSTRY, LABOR & HUMAN RELATIONS

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Robert Ewer  
Route 1, Box 149  
Holcombe, WI 54745

Appellant,

vs.

PECFA Claim #54745-999-09

Secretary, DEPARTMENT OF INDUSTRY,  
LABOR AND HUMAN RELATIONS,

Respondent.

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**FINAL DECISION**

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**P R E L I M I N A R Y   R E C I T A L S**

Pursuant to a petition filed May 24, 1994, under § 101.02(6)(e), Wis. Stats., and §ILHR 47.53, Wis. Adm. Code, to review a decision by the Department of Industry, Labor and Human Relations, a hearing was held on September 29, 1994, at Eau Claire, Wisconsin.

The issue for determination is whether the department's decision denying Petroleum Environmental Cleanup Fund (PECFA) reimbursement in the amount of \$10,306.19 was reasonable. This amount was denied because the appellant did not comply with the requirements of §ILHR 47.01(4), Wis. Adm. Code, that the responsible party select a consulting firm through a comparison of at least three proposals, that the responsible party use competitive bids to decide on purchases or contracts for commodity services, and that the responsible party consider at least 3 remediation alternatives, one of which must be passive bio-remediation.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Mr. Robert Ewer  
Route 1, Box 149  
Holcombe, WI 54745

Kristiane Randal, Assistant General Counsel  
Department of Industry, Labor and Human Relations  
201 East Washington Avenue  
P.O. Box 7946  
MADISON WI 53707-7946

The authority to issue a final decision in this matter has been delegated to the undersigned by order of the Secretary.

The Hearing Examiner issued a proposed decision in this case dated December 30, 1994. The parties were given 20 days to file objections. Mr. Ewer filed objections to the proposed decision and Attorney Randal filed a statement in support of the proposed decision. Having considered the proposed decision and the objections, the matter is now ready for final decision.

### **FINAL DECISION**

The Proposed Decision dated December 30, 1994, is hereby adopted as the final decision of the department.

### **NOTICE TO PARTIES**

#### **Request for Rehearing**

This is a final agency decision under §227.48, Stats. If you believe this decision is based on a mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision and which you could not have discovered sooner through due diligence. To ask for a new hearing, send a written request to Department of Industry, Labor & Human Relations, Office of Legal Counsel, P. O. Box 7946, Madison, WI 53707-7946.

Send a copy of your request for a new hearing to all the other parties named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the hearing examiner made and why it is important. Or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain how your request for a new hearing is based on either a mistake of fact or law or the discovery of new evidence which could not have been discovered through due diligence on your part, your request will have to be denied.

Your request for a new hearing must be received no later than 20 days after the date of this decision.

Late requests cannot be granted. The process for asking for a new hearing is in Sec. 227.49 of the state statutes.

#### Petition For Judicial Review

Petitions for judicial review must be filed no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing if you ask for one). The petition for judicial review must be served on the Department of Industry, Labor and Human Relations, Office of Legal Counsel, 201 E. Washington Avenue, Room 400x, P. O. Box 7946, Madison, WI 53707-7946. The petition for judicial review must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for judicial review is described in Sec. 227.53 of the statutes.

Signed and dated in Madison, Wisconsin 30<sup>th</sup> this day of January, 1995.

Patrick J. Osborn, Deputy Secretary  
Department of Industry, Labor & Human Relations  
P O Box 7946  
Madison WI 53707-7946  
Telephone: 608-266-7552  
Facsimile: 608-266-1784

cc: Parties in Interest

STATE OF WISCONSIN  
Before the Department of Industry, Labor and Human Relations

PROPOSED HEARING OFFICER DECISION

In the matter of the denial of  
reimbursement of PECFA Program Funds to:

Mr. Robert Ewer

Claim No. 54745-999-09

d/b/a Ewer's Store  
LH4509 Highway 27  
Holcombe, WI 54725

DATE OF HEARING:	September 29, 1994
PLACE OF HEARING:	Eau Claire, WI
STATE HEARING OFFICER:	Theresa M. Larson
APPEARANCES:	Claimant, Robert Ewer LH4509 Highway 27 Holcombe, WI 54725

Department, Kristiane Randal  
Assistant General Counsel  
P.O. Box 7946  
Madison, WI 53707-7946

NOTICE OF RIGHTS

Attached is the Proposed Findings of Fact, Conclusions of Law and Decision in the above stated matter. Any party aggrieved by the proposed decision has the right to file written objections to the findings of fact, conclusions of law, or order. Such written objections must be filed within twenty (20) days from the date this Pro-posed Decision is mailed. The individual designated to make the FINAL Decision of the Department of Industry, Labor and Human Relations in this matter is Patrick J. Osborne, Deputy Secretary of the Department of Industry, Labor and Human Relations, whose address is 201 East Washington Avenue, Room 400, Madison, Wisconsin 53707. All written objections should be addressed directly to Mr. Osborne.

Dated and Mailed: December 30, 1994

STATE OF WISCONSIN  
BEFORE THE  
DEPARTMENT OF INDUSTRY, LABOR

## AND HUMAN RELATIONS

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In the matter of the denial of  
reimbursement of PECFA Program  
funds to:

MR. ROBERT EWER/EWER'S STORE

Eau Claire Hearing Office  
2105 Heights Drive  
Eau Claire, WI 54701  
(715) 836-2738

PECFA Claim No. 54745-9999-09

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On May 16, 1994, the Department of Industry, Labor and Human Relations issued an appealable order denying Robert Ewer's application for reimbursement in the amount of \$10,306.19 under the PECFA program. Robert Ewer filed a timely appeal from such denial on May 24, 1994. A hearing pursuant to that appeal was held on September 29, 1994, before Administrative Law Judge Theresa M. Larson, acting as a state hearing officer.

Based on the applicable records and evidence in this case, the appeal tribunal makes the following

### PROPOSED FINDINGS OF FACT

1. At all times material, Robert Ewer was the legal owner of the premises located at LH4509 Highway 27, Holcombe, Wisconsin, and operated a business known as Ewer's Store, a family-run grocery, bait and gas station business.
2. On May 24, 1993, two Underground Storage Tanks (USTs), one 10,000 gal. and one 2,500 gal., were removed from the premises identified in par. 1, above, as requested by Mr. Ewer. For that removal and accompanying activities, Mr. Ewer followed the guidance of personnel from Eau Claire Equipment Co. and environmental specialists from the consulting firm, Cedar Corporation.
3. During the tank removal process referred to in par. 2, soil contamination around and under the 2,500 gal. tank was identified. Contaminated soil was stockpiled on the site for future remediation.
4. Mr. Ewer did not obtain three Consultant proposals for comparison prior to selecting the consulting firm.
5. A remedial action plan was not developed for the site which included a consideration of at least three alternatives.
6. Mr. Ewer did not obtain three competitive bids for excavating services.

## DISCUSSION

The applicable law in this case is found in ILHR 47, an emergency rule which became effective January 1, 1993. Mr. Ewer argues that he did not have proper notification of the law. There was proper notice of the law published. While no specific information was sent to Mr. Ewer at the same time, he did not seek information from the department prior to embarking on what was admittedly a large undertaking. Part of the responsibility of operating a business is to become knowledgeable of and comply with any applicable laws. He chose to rely on people who failed to point out prior to any disruption with the business that there were possible contamination issues.

## PROPOSED CONCLUSIONS OF LAW

The Department's action denying reimbursement was reasonable as Mr. Ewer failed to comply with three specific requirements of ILHR 47: ILHR 47.01(4)(a), which required the selection of a consulting firm through a comparison of at least three proposals; ILHR 47.01(4)(b), which required the purchase or contract for commodity services through the use of competitive bids; ILHR 47.01(4)(c), which required the consideration of the costs and benefits of at least 3 remediation alternatives one of which must be passive bio-remediation. As the total claim is denied in this proposed decision, the issue of whether the contamination was from spillage is not addressed.

## PROPOSED DECISION

The State Hearing Officer therefore finds that the decision of the Department of Industry, Labor and Human Relations dated May 16, 1994, denying Robert's Ewer's application for reimbursement in the amount of \$10,306.19 under the PECFA program was reasonable.

Dated and Mailed:

STATE HEARING OFFICER

December 30, 1994

Theresa M. Larson